

**WEINER  
BRODSKY  
SIDMAN  
KIDER PC**

232460

JUN 15 2012

June 15, 2012

**BY HAND DELIVERY**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings

JUN 15 2012

Part of  
Public Record

**FEE RECEIVED**

JUN 15 2012

**SURFACE  
TRANSPORTATION BOARD**

Re: STB Finance Docket No. 35641, Sisseton Milbank Railroad Company –  
Acquisition and Operation Exemption -- SLA Property Management  
Limited Partnership and Sisseton Milbank Railroad, Inc.

STB Finance Docket No. 35642, Twin Cities & Western Railroad Company, ✓  
the Estate of Douglas M. Head and the DMH Trust fbo Martha M. Head –  
Continuance in Control Exemption -- Sisseton Milbank Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceedings are an original and 10 copies of each of (i) the verified notice of exemption of Sisseton Milbank Railroad Company, pursuant to 49 C.F.R. § 1150.31, and (ii) the petition for exemption of Twin Cities & Western Railroad Company et al. pursuant to 49 C.F.R. Part 1121 and 49 U.S.C. § 11323.

Also enclosed, pursuant to 49 C.F.R. § 1180.6(a)(6), are 20 additional copies of the maps, and two checks, in the amounts of \$1,800 and \$9,300, to cover the filing fees for each of these proceedings.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,

*Rose-Michele Nardi/KS*  
Rose-Michele Nardi

Enclosures

**FILED**

JUN 15 2012

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

JUN 15 2012

STB FINANCE DOCKET NO. 35642

TWIN CITIES & WESTERN RAILROAD COMPANY,  
THE ESTATE OF DOUGLAS M. HEAD AND THE  
DMH TRUST FBO MARTHA M. HEAD  
– CONTINUANCE IN CONTROL EXEMPTION –  
SISSETON MILBANK RAILROAD COMPANY

**FILED**  
JUN 15 2012  
SURFACE  
TRANSPORTATION BOARD

PETITION FOR EXEMPTION  
FROM  
49 U.S.C. § 11323

**FEE RECEIVED**  
JUN 15 2012  
SURFACE  
TRANSPORTATION BOARD

PETITION FOR EXEMPTION

***EXPEDITED HANDLING REQUESTED***

Twin Cities & Western Railroad Company ("TCW"), The Estate of Douglas M. Head (the "Estate") and the DMH Trust fbo Martha M. Head (the "Trust") pursuant to 49 U.S.C. § 10502 and 49 CFR Parts 1121 and 1180, hereby petition the Surface Transportation Board (the "Board") to exempt their acquisition of control over Sisseton Milbank Railroad Company ("SMRC") from the prior approval requirements of 49 U.S.C. § 11323, upon SMRC's becoming a rail carrier.<sup>1</sup> SMRC is a non-carrier company, which has filed a notice of exemption to become a rail carrier on June 15, 2012. *See Sisseton Milbank Railroad Company -- Acquisition and Operation Exemption -- SLA Property Management Limited Partnership and Sisseton Milbank Railroad, Inc.*, STB Finance Docket No. 35641.

<sup>1</sup> In this Petition, TCW and the Estate/Trust will be referred to together as the "Controlling Parties".

ENTERED  
Office of Proceedings  
JUN 15 2012  
Part of  
Public Record

## **STATEMENT OF FACTS**

The Estate currently controls, and the Trust is expected soon to control,<sup>2</sup> TCW, a class III common carrier railroad that operates in Minnesota and South Dakota. TCW, in turn, controls Minnesota Prairie Line, Inc. ("MPL"), also a class III common carrier railroad, which operates in Minnesota<sup>3</sup>. TCW and MPL connect at Norwood, MN. A map of TCW and MPL is appended hereto as Exhibit A.

The Trust also controls Red River Valley & Western Railroad ("RRVW"), a class III common carrier railroad that operates in Minnesota and North Dakota. RRVW, in turn, controls Rutland Line, Inc. ("Rutland"), a class III common carrier railroad, which also operates in Minnesota and North Dakota.<sup>4</sup> RRVW and Rutland connect at or near Breckenridge, Minnesota. A map of RRVW and Rutland is appended hereto as Exhibit B.<sup>5</sup>

TCW, in turn, controls SMRC, which is currently a non-carrier. SMRC will become a carrier upon consummation of its acquisition and operation of the Subject Line (as defined below) in STB Finance Docket No. 35641. In that proceeding, SMRC seeks authority to acquire all of the interests of Sisseton Milbank Railroad, Inc. ("SMRR") and SLA Property Management Limited Partnership ("SLA") in and to the following rail line: an approximately 37.1-mile rail line situated in the Counties of Grant and Roberts, South Dakota, which extends from approximate railroad milepost 0.9 in or near Milbank, South Dakota to approximate railroad milepost 38.0 in or near Sisseton, South Dakota (the "Subject Line"). A map of the Subject Line is attached hereto as Exhibit C.

---

<sup>2</sup> It is anticipated that the TCW stock currently held by the Estate will be distributed to the Trust in the near future.

<sup>3</sup> *Twin Cities & Western Railroad Company, Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F. Drusch -- Continuance in Control Exemption -- Minnesota Prairie Line, Inc.*, STB Finance Docket No. 34068, served June 6, 2002 ("*Minnesota Prairie Line*").

<sup>4</sup> *Red River Valley & Western Railroad Company and Rutland Line, Inc. -- Corporate Family Transaction Exemption*, STB Finance Docket No. 35254, served July 2, 2009.

SMRC, SMRR and SLA have reached an agreement for the sale and purchase of the Subject Line. Because it is likely that the acquisition transaction will close prior to the Board's issuance of an exemption authorizing TCW, the Estate and the Trust to control SMRC, TCW has entered into a Voting Trust Agreement, pursuant to 49 C.F.R. Part 1013, in which the shares of SMRC will be deposited to prevent any unauthorized control pending TCW's receipt of Board authority to control SMRC.

TCW formed the subsidiary SMRC to acquire the Subject Line in order to separate the risks of the transaction. After consummation of the purchase transaction, SMRC will continue to be maintained and managed as a separate entity from TCW. Common carrier rail service will continue to be available to shippers who request it. No shipper currently located on the Subject Line will experience a reduction in its transportation options.

The proposed continuance in control transaction here does not involve any class I carrier. However, the continuance in control of SMRC by TCW does not qualify for the class exemption under 49 CFR § 1180.2(d)(2), because SMRC and TCW will connect in or near Milbank, South Dakota. Accordingly, TCW, the Estate and the Trust are proceeding through this Petition.

## **ARGUMENT**

### **I. EXEMPTION CRITERIA SATISFIED.**

The "[a]cquisition of control of a rail carrier by any number of rail carriers", and the "[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers" requires the prior approval of the Board. 49 U.S.C. §§ 11323(a)(3) and 11323(a)(5). However, under 49 U.S.C. § 10502, the Board must exempt a transaction from its prior approval requirements when the Board finds that: (1) prior approval "is not necessary to

---

<sup>5</sup> When the stock of RRVW was transferred from the Estate to the Trust, the Trust inadvertently did not seek authority to control RRVW and Rutland. The Trust will file for such authority in the near future.

carry out the rail transportation policy of" 49 U.S.C. § 10101 (the "RTP"); and (2) either (a) 'the transaction...is of limited scope", or (b) regulation is not necessary "to protect shippers from the abuse of market power". 49 U.S.C. § 10502. In this case, all three criteria are satisfied.

A. Regulation Is Not Needed to Carry Out the Rail Transportation Policy.

Detailed scrutiny of Controlling Parties' continuance in control over SMRC is not needed to carry out the objectives of the RTP. To the contrary, an exemption from the prior approval requirements here will promote several of these objectives. By minimizing the expense and delay associated with the application process, and by permitting the Controlling Parties to assist in the continuation of the rail service currently provided by SMRR (without unnecessarily putting at risk the existing assets of the Controlling Parties and the other companies in which they hold interests), exemption of this transaction will "minimize the need for Federal regulatory control over the rail transportation system," 49 U.S.C. § 10101(2), and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. § 10101(7).

Also, by permitting SMRC to become part of an existing family of short lines – enabling a seamless connection between TCW and SMRC – with the experience and administrative support TCW can offer, the exemption will "ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense" (49 U.S.C. § 10101(4)), "foster sound economic conditions in transportation and [] ensure effective competition and coordination between rail carriers and other modes" (49 U.S.C. § 10101(5)), and "encourage honest and efficient management of railroads" (49 U.S.C. § 10101(9)).

Finally, an exemption here would expedite handling and resolution of Board proceedings. 49 U.S.C. § 10101(15). Other aspects of the RTP will not be adversely affected.

Under such circumstances, an exemption is appropriate. *See Genesee & Wyoming Inc. -- Continuance in Control Exemption -- Chattahoochee Bay Railroad, Inc.*, -- STB Finance Docket No. 34913, served Nov. 9, 2006 ("*Chattahoochee Bay*"); *Summit View, Inc. – Control Exemption – Mahoning Valley Railroad Company*, STB Finance Docket No. 34026 (served May 11, 2001) (enabling carrier to become part of a family of small carriers furthers the RTP). *See also Minnesota Prairie Line, supra* (Board granting petition for exemption for TCW to control MPL). Indeed, in this case, the fact of the connection between TCW and SMRC actually *promotes* elements of the RTP, as it will foster improved operating efficiency without foreclosing any current transportation options presently open to shippers.

B. The Transaction Is Limited In Scope.

One indicator that a transaction is of limited scope is where the transaction involves a carrier operating in a limited geographical area. *See, e.g., Genesee & Wyoming, Inc. – Continuance In Control Exemption – Pittsburgh & Shawmut Railroad, Inc.*, STB Finance Docket No. 32904 (served June 21, 1996) ("*Pittsburgh*"). Here, SMRC will acquire and operate over just 37.1 route-miles of line in a discrete geographic area. In addition, when a transaction merely adds a separately incorporated class III carrier to an existing family of short lines, a finding of limited scope is appropriate. *See Pittsburgh, supra*. Further, the continuance in control by the Controlling Parties will not result in a reduction of transportation options on the Subject Line, and the common control of SMRC by the Controlling Parties will not affect the previously authorized operations of any of the other carriers. Under these circumstances, a finding of limited scope is warranted.

C. Regulation of the Transaction Is Not Needed to Protect Shippers From Abuse of Market Power.

Because the proposed continued control by the Controlling Parties over SMRC is limited in scope, it is not even necessary to consider whether prior review is needed to protect shippers from an abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). In any event, there is no potential for such abuse here.

Common carrier rail service will continue to be available to shippers who request it. SMRC simply will be handling the traffic that is currently being handled by SMRR. The control of SMRC by the Controlling Parties will not result in any current shipper losing access to rail service on the Subject Line, or experiencing a reduction in its transportation options.

For these reasons, a finding of a lack of market power is proper.<sup>6</sup> *See Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen -- Continuance in Control Exemption -- Chattahoochee & Gulf Railroad Co., Inc.*, STB Finance Docket No. 34299, served May 16, 2003.

II. NO LABOR PROTECTION PERMITTED.

Section 11326(c) of 49 U.S.C. does not provide for labor protection for transactions under sections 11324 and 11325 that involve only class III rail carriers. Because this transaction involves only class III rail carriers, the Board may not impose labor protective conditions for the proposed transaction.

III. NO SIGNIFICANT ENVIRONMENTAL OR HISTORIC IMPACT.

Under 49 CFR § 1105.6(2)(i), no environmental documentation need be prepared for a control transaction that will not result in (1) a traffic diversion from rail to motor carriage of

---

<sup>6</sup> Moreover, the Subject Line is currently at risk for abandonment. Permitting SMRC to operate the Subject Line, under the control of an experienced family of short line railroads, offers shippers a better chance for continued rail service.

more than 1000 carloads per year or 50 carloads per mile; (2) a 100 percent increase in rail traffic or rail yard activity; (3) increases of at least eight trains per day; (4) increases of more than 10 percent or 50 vehicles per day in truck traffic; or (5) prescribed level increases in rail or truck traffic in class I or non-attainment areas under the Clean Air Act. *See* 49 CFR §§ 1105.7(e)(4) and (5). Continuance in control by the Controlling Parties of SMRC, upon SMRC's becoming a class III carrier, basically involves a change in ownership of the Subject Line and will not lead to significant changes in rail operations or traffic volumes. As such, the threshold criteria for environmental documentation will not be met, and no such documentation is required.

Similarly, 49 CFR § 1105.8(b)(3) provides that a control transaction that will not substantially change the level of maintenance of railroad property is exempt from the requirement of preparing a historic report. As the transaction in question contemplates no significant changes in maintenance or operations over the Subject Line, no historic report is required.

#### IV. VOTING TRUST.

TCW anticipates the exemption in STB Finance Docket No. 35641 will become effective and the proposed transaction will be consummated, thereby rendering SMRC a rail carrier, prior to the Board's decision in this proceeding. Accordingly, upon the occurrence of such events, TCW intends to transfer control of SMRC into an independent, irrevocable voting trust to prevent any unauthorized control, pending the Board's issuance of its decision in this matter. A copy of the form of voting trust agreement is attached hereto as Exhibit D.

#### V. EXPEDITED HANDLING NECESSARY.

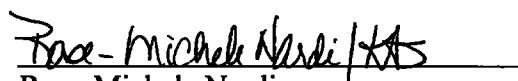
Lengthy interim control by a trustee pursuant to a Voting Trust Agreement may adversely affect operations over the Subject Line by causing inefficiencies. Accordingly, the Controlling Parties request that the Board expedite this matter, issuing a decision as soon as practicable. In a

similar circumstance, the Board previously granted expedited review. *See Chattahoochee Bay, supra.*

### **CONCLUSION**

For all of the foregoing reasons, the Controlling Parties request that their Petition for exemption to continue in control of SMRC be granted.

Respectfully submitted,

  
Rose-Michele Nardi  
Weiner Brodsky Sidman Kider PC  
1300 19<sup>th</sup> Street, NW  
Fifth Floor  
Washington, DC 20036-1609  
(202) 628-2000

Attorneys for:

TWIN CITIES & WESTERN RAILROAD  
ESTATE OF DOUGLAS M. HEAD  
DMH TRUST fbo MARTHA M. HEAD

Dated: June 15, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB FINANCE DOCKET NO. 35642

---

TWIN CITIES & WESTERN RAILROAD COMPANY,  
THE ESTATE OF DOUGLAS M. HEAD AND THE  
DMH TRUST FBO MARTHA M. HEAD  
– CONTINUANCE IN CONTROL EXEMPTION –  
SISSETON MILBANK RAILROAD COMPANY

---

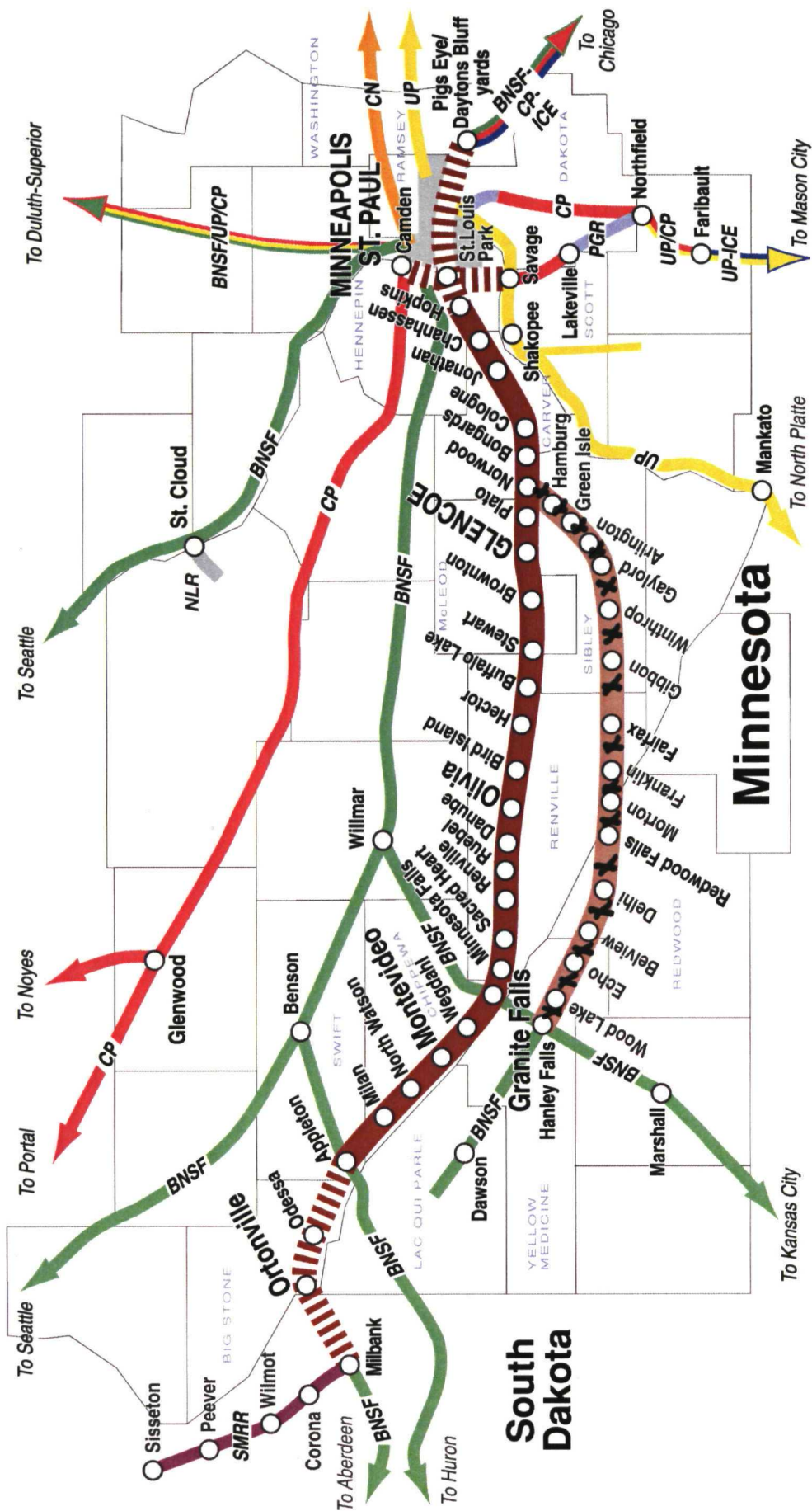
PETITION FOR EXEMPTION  
FROM  
49 U.S.C. § 11323

---

EXHIBIT A

---

MAP OF TCW AND MPL



# Twin Cities & Western Railroad Company

- Twin Cities & Western
- x x x Minnesota Prairie Line
- ||||| Trackage rights



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB FINANCE DOCKET NO. 35642

---

TWIN CITIES & WESTERN RAILROAD COMPANY,  
THE ESTATE OF DOUGLAS M. HEAD AND THE  
DMH TRUST FBO MARTHA M. HEAD  
– CONTINUANCE IN CONTROL EXEMPTION –  
SISSETON MILBANK RAILROAD COMPANY

---

PETITION FOR EXEMPTION  
FROM  
49 U.S.C. § 11323

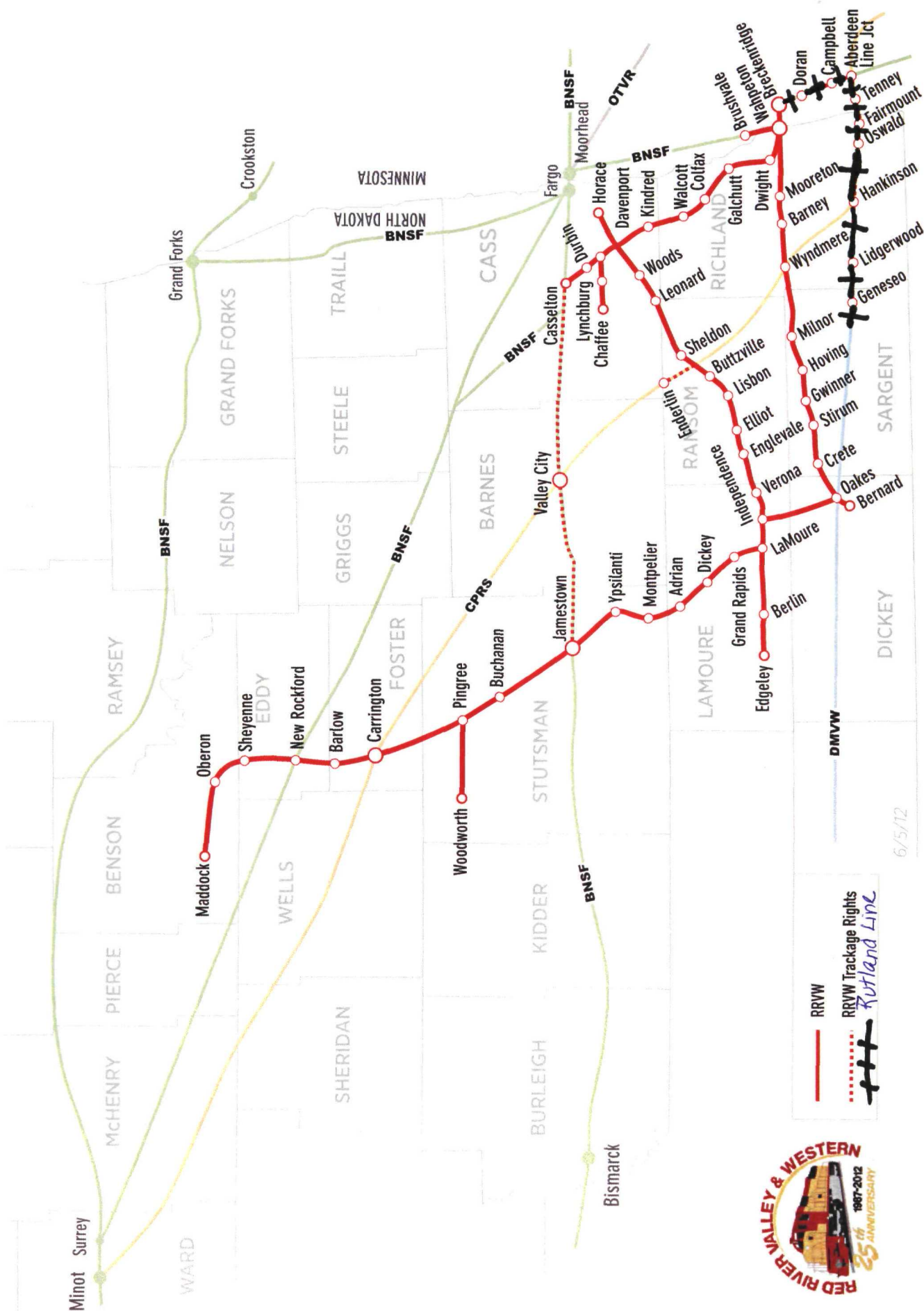
---

EXHIBIT B

---

MAP OF RRVW AND RUTLAND

# Red River Valley & Western Railroad Company



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB FINANCE DOCKET NO. 35642

---

TWIN CITIES & WESTERN RAILROAD COMPANY,  
THE ESTATE OF DOUGLAS M. HEAD AND THE  
DMH TRUST FBO MARTHA M. HEAD  
– CONTINUANCE IN CONTROL EXEMPTION –  
SISSETON MILBANK RAILROAD COMPANY

---

PETITION FOR EXEMPTION  
FROM  
49 U.S.C. § 11323

---

EXHIBIT C

---

MAP OF SMRC



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB FINANCE DOCKET NO. 35642

---

TWIN CITIES & WESTERN RAILROAD COMPANY,  
THE ESTATE OF DOUGLAS M. HEAD AND THE  
DMH TRUST FBO MARTHA M. HEAD  
– CONTINUANCE IN CONTROL EXEMPTION –  
SISSETON MILBANK RAILROAD COMPANY

---

PETITION FOR EXEMPTION  
FROM  
49 U.S.C. § 11323

---

EXHIBIT D

---

FORM OF VOTING TRUST AGREEMENT

## **VOTING TRUST AGREEMENT**

THIS VOTING TRUST AGREEMENT (the "Voting Trust") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between Twin Cities & Western Railroad Company, a Minnesota corporation ("TCW" or "Settlor"), and Byron B. Olsen ("Trustee"), whose address is 1543 Grantham Street, St. Paul, MN 55108-1449. This Voting Trust is being entered into in accordance with the Guidelines for the Proper Use of Voting Trusts as set forth in 49 CFR Part 1013.

### **W I T N E S S E T H:**

WHEREAS, TCW is a common carrier freight railroad;

WHEREAS, TCW also owns and controls Sisseton Milbank Railroad Company ("SMRC"), a non-carrier;

WHEREAS, TCW is currently controlled by the Estate of Douglas M. Head (the "Estate");

WHEREAS, it is anticipated that the TCW stock held by the Estate will be distributed to the DMH Trust fbo Martha M. Head (the "Trust") in the near future;

WHEREAS, SMRC, upon closing a purchase agreement ("Agreement") for the acquisition and operation of a certain rail line (the "Subject Line"), combined with effective approval of that transaction (or exemption from regulation) by the Surface Transportation Board ("Board"), will become a common carrier freight railroad;

WHEREAS, it is likely that SMRC will become a rail carrier prior to the Board's issuance of any required approval or exemption respecting Settlor's continued control over SMRC, once it becomes a common carrier railroad;

WHEREAS, Settlor intends, simultaneously with or prior to SMRC's becoming a carrier, to cause the deposit of the shares of SMRC into an independent irrevocable voting trust pursuant to the Board's regulations, in order to avoid any allegation or assertion that Settlor is controlling or has power to control SMRC prior to receipt of any requisite Board approval or exemption;

WHEREAS, Trustee is not a shareholder, officer or board member of Settlor or any of Settlor's subsidiaries or affiliates, or an executor of the Estate or a trustee of the Trust, and none of the Settler, Estate or Trust has any direct business arrangements with Trustee (other than this Voting Trust), that could be construed as creating an indicium of control over Trustee;

WHEREAS, the Trustee is willing to act as voting trustee pursuant to the terms of this Voting Trust and the regulations of the Board.

NOW THEREFORE, in consideration of the premises and mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Settlor hereby irrevocably appoints Byron B. Olsen as Trustee hereunder, and Byron B. Olsen hereby accepts said appointment and agrees to act as Trustee under this Voting Trust as provided herein.

2. This Voting Trust shall be irrevocable by Settlor and shall terminate only in accordance with the provisions hereof.

3. Settlor agrees that, prior to taking the requisite action that would render SMRC a common carrier, the shares of SMRC will be assigned, transferred and delivered in trust to the Trustee, at 1543 Grantham Street, St. Paul, MN 55108-1449, and any and all additional shares of SMRC hereafter acquired during the term of this Voting Trust likewise will be assigned, transferred and delivered in trust to Trustee. All shares shall be duly endorsed or accompanied by proper

instruments duly executed for transfer thereof to the Trustee, with all applicable transfer taxes and fees having been paid by Settlor, in exchange for Trust Certificates (as described in Paragraph 4 hereof). The delivery of certificates for such shares may be made at such other place as may be designated by the Trustee. All shares of SMRC at any time in deposit with the Trustee hereunder are hereinafter referred to as the "Trust Stock."

4. The Trustee shall hold in trust and shall dispose of, under and pursuant to the terms and conditions of this Voting Trust, all Trust Stock which may now or afterwards from time to time be delivered by or for the account of Settlor. In exchange for the Trust Stock, the Trustee shall cause to be issued and delivered to Settlor, voting trust certificates, substantially in the form attached hereto as Exhibit A ("Trust Certificates"), with the blanks therein appropriately filled.

5. The Trust Certificates issued by the Trustee may be transferred on the books of the Trustee by the registered holder or holders of Trust Certificates (the "Holder" or "Holders") upon the surrender thereof, properly endorsed by the Holder, in person or by an authorized attorney of the Holder, according to rules from time to time established for that purpose by the Trustee. Title to the Trust Certificates, when endorsed, shall, to the extent permitted by law, be transferable with the same effect as in the case of negotiable instruments. Delivery of the Trust Certificates, endorsed in blank, by a Holder, shall vest title to and all rights under the Trust Certificates in the transferee thereof to the same extent and for all purposes as would delivery under like circumstances of negotiable instruments payable to bearer; provided, however, that the Trustee may treat the Holder of record, or, when presented endorsed in blank, the bearers, as the owners for all purposes whatsoever, and shall not be affected by any notice to the contrary; provided further, however, that the Trustee shall not be required to deliver any Trust Stock without the surrender and cancellation of the corresponding Trust Certificates. Except to the extent provided otherwise in Paragraph 12

hereof, every transferee of a Trust Certificate shall, upon the receipt of such properly endorsed Trust Certificate, become a party to this Voting Trust as though an original party, and shall assume all attendant rights and obligations under this Voting Trust. In connection with, and as a condition of making or permitting any transfer or delivery of any Trust Stock or Trust Certificates under any provision of this Voting Trust, the Trustee may require the payment of a sum sufficient to pay or reimburse the Trustee for any stamp tax or other governmental charge in connection with the transaction.

6. From the date first written above, and until such time as the Voting Trust shall terminate in accordance with the provisions herein, the Trustee shall, subject to the limitations contained herein, have the full right to vote and to execute consents with respect to the Trust Stock, and shall be duly bound to exercise such voting rights, either in person or by proxy, at all meetings of the shareholders of SMRC for any purpose, and shall possess in respect of any and all the Trust Stock, and shall be entitled to exercise all the powers of absolute owners of the Trust Stock and all rights of every nature in respect of such Trust Stock, including the right to vote and to execute consents for every purpose and to receive dividends thereon, unless otherwise directed by a court of competent jurisdiction. The Trustee shall not exercise the voting powers of the Trust in any way so as to cause any dependence or intercorporate relationship between Settlor, the Estate, the Trust (or entities controlled or affiliated with the Settlor, Estate or Trust), on the one hand, and SMRC or its affiliates on the other hand, other than such dealings as permitted pursuant to Paragraph 7 hereof. (The term "affiliate" or "affiliates" wherever used in this Voting Trust shall have the meaning specified in 49 U.S.C. § 11323(c)). The Trustee may not vote the Trust Stock for any transaction that would result in a violation of 49 U.S.C. § 11323; provided, however, that the Trustee may, with

the consent of the Holders of record of Trust Certificates representing at least two-thirds of the shares of SMRC at the time held pursuant to this Voting Trust, vote with respect to the following:

- (a) the sale, lease or exchange of all or substantially all of the property and assets of SMRC to any company other than a company controlled by or affiliated with Settlor, the Estate or the Trust;
- (b) the consolidation or merger of SMRC with or into any company other than a company controlled by or affiliated with Settlor, the Estate or the Trust.

In the case of any sale, lease, exchange, consolidation, merger or dissolution so made with the consent of the Holders of record of Trust Certificates representing at least two-thirds of the shares of SMRC at the time held in trust, the Trustee shall have the power to sell, exchange, surrender or otherwise dispose of all or any part of the ownership interest of SMRC at the time held in trust, pursuant to the terms of or in order to carry into effect such sale, lease, exchange, consolidation, merger or dissolution. Subject to the provisions hereof and until termination of this Voting Trust, the Trustee may vote or consent, or issue proxies to vote or consent, at shareholders' meetings of SMRC and otherwise, as the Trustee shall determine in his uncontrolled discretion, and no voting or other right or power with respect to the Trust Stock and other securities held in trust shall pass to the Holders or to others by or under the Trust Certificates, or by or under this Voting Trust, or by or under any other agreement.

7. Neither the Trustee, nor any director, officer, or affiliate of the Trustee, may serve as an officer or member of the board of directors of Settlor, any affiliate of Settlor or any company controlled by the Estate or Trust; or be a shareholder of Settlor, any affiliate of Settlor or any company controlled by the Estate or Trust. Neither the Trustee, nor any director, officer, or affiliate of the Trustee, may serve as an executor of the Estate or a trustee of the Trust; or have any direct or

indirect business arrangements or dealings, financial or otherwise, with Settlor, the Estate or the Trust, any affiliate of Settlor or any company controlled by Settlor, the Estate or Trust (other than this Voting Trust), that could be construed as creating an indicium of control by Settlor, the Estate or the Trust over Trustee; or have any other such arrangements, dealings or relationships that could be construed as creating an indicium of control by Settlor, the Estate or the Trust over Trustee. The Trustee has the responsibility to manage SMRC through casting his votes for SMRC's Board of Directors and to exercise the voting rights provided in paragraph 6 hereof. The Trustee's duties are therefore not merely custodial in nature. Nothing in this Voting Trust shall restrict the ability of companies controlled by Settlor and the Estate or the Trust to enter into or continue commercial dealings with SMRC in the ordinary course of business, based on arm's-length bargaining, during the term of this Voting Trust, including without limitation the following:

- (a) the provision of rail service over the SMRC's rail line by any company controlled by or affiliated with Settlor, the Estate or Trustee;
- (b) the leasing by SMRC of rolling stock or other equipment or assets or services from any company controlled by or affiliated with Settlor, the Estate or the Trust, and
- (c) the provision by SMRC of such documents and information as Settlor may reasonably request in connection with presenting its position regarding control of SMRC to the Board or a court of competent jurisdiction.

8. In voting or giving directions for voting the Trust Stock, the Trustee will exercise his best judgment to elect suitable directors in the best interest of the affairs of SMRC. The Trustee, however, assumes no responsibility with respect to acts or omissions of the directors of SMRC (other than the negligence or willful misconduct of the Trustee himself).

9. The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by Trustee under the terms hereof and shall be entitled to indemnity from Settlor against any and all expenses, claims and liabilities incurred in connection with or with respect to the performance of Trustee's duties under this Voting Trust; provided, that the indemnification of the Trustee by the Settlor shall not extend to expenses, claims or liabilities resulting from or in connection with the willful misconduct or gross negligence of the Trustee. Trustee shall submit to Settlor quarterly invoices for services with appropriate documentation, and Settlor shall pay such statements within thirty (30) days after receipt thereof.

10. From and after the deposit of the Trust Stock with Trustee, and until the termination of this Voting Trust pursuant to the terms hereof, a Holder shall be entitled to receive, from time to time, payment of any distributions, other than distributions that are in the form of ownership interest in SMRC, having voting rights of any class, collected by the Trustee upon the ownership interests in SMRC represented by the Trust Certificates, or upon any proceeds. Immediately following receipt of any such distribution, the Trustee shall pay the same over to or as directed by the transferee or Holder hereunder as then known to the Trustee.

11. In the event that any distribution paid in ownership interest in SMRC, having voting rights of any class shall be received by the Trustee, such interest shall be held by the Trustee in accordance with the terms of this Voting Trust as though initially deposited with the Trustee by Settlor under this Voting Trust. With respect to such interest, the Trustee shall issue new or additional Trust Certificates to the Holders entitled to receive any such distribution.

12. (a) This Voting Trust is accepted by the Trustee subject to the right hereby reserved to Settlor at any time to sell or make any other disposition, in whole or in part, of Settlor's Trust Stock, whether or not an event described in subparagraph (b) below has occurred. The Trustee will

at any time upon the receipt of written instructions from a Holder designating the person or entity to whom the Holder has sold or otherwise disposed of the whole or any part of such Holder's Trust Stock, and certifying in writing that such person or entity is not a shareholder, officer, director or affiliate of Settlor, an executor of the Estate or a trustee of the Trust (upon which written certification the Trustee shall be entitled to rely), immediately transfer to such person or entity therein named all of the Trustee's right, title and interest in such amount of the Trust Stock as may be set forth in such instructions and shall cooperate with such person or entity in having such Trust Stock reissued in such person's name. If such instructions result in the transfer of all of the Trust Stock subject to this Voting Trust as of the date of such instructions, then upon transfer of the Trustee's right, title and interest therein, and in the event of a sale thereof, upon delivery of the proceeds of such sale, this Voting Trust shall cease and come to an end. If such instructions relate to only a part of the Trust Stock, then this Voting Trust shall cease as to such part upon such transfer, and the receipt of proceeds in the event of sale, but shall remain in full force and effect as to the remainder of the Trust Stock. In the event of a sale of Trust Stock by Settlor, the net proceeds of such sale shall be payable to the Trustee and upon receipt thereof the Trustee shall promptly pay or cause to be paid such net proceeds to Settlor. It is the intention of this subparagraph that no violations of 49 U.S.C. § 11323 will result from a termination of this Voting Trust.

(b) In the event that: (1) Title 49 of the United States Code or other controlling law is amended to allow Settlor, the Estate and the Trust to continue control of SMRC upon SMRC's becoming a carrier without obtaining Board or other governmental approval or exemption. (2) the Board by final order approves or exempts the continued control by Settlor, the Estate and the Trust of SMRC upon SMRC's becoming a rail carrier, or (3) Settlor, the Estate and the Trust are

entitled under the regulations of the Board to file a verified notice of exemption, and the Board so exempts the continued control by Settlor, the Estate and the Trust; then immediately upon the delivery of a copy of such order of the Board with respect thereto, or an opinion of independent counsel selected by the Trustee that no order of the Board or other governmental authority or exemption is required, the Trustee shall either vote the Trust Stock as directed in writing by the Holders, or transfer to the Holders or transfer upon the order of the Holders as then known to the Trustee, Trustee's right, title and interest in and to all of the Trust Stock or such part as may then be held by Trustee (as provided in subparagraph (a) hereof), and upon such transfer this Voting Trust shall cease and come to an end.

(c) In the event that: (1) the Board or a court of competent jurisdiction denies Settlor, the Estate or the Trust authority to continue in control of SMRC upon SMRC's becoming a carrier and that order becomes final after judicial review or failure to appeal, (2) the Board or a court of competent jurisdiction orders the Trustee to divest himself of the Trust Stock, and that order becomes final after judicial review or failure to appeal, or (3) the Holders determine in light of any other final order that the Trust Stock should be sold; the Trustee shall use best efforts to dispose of the Trust Stock under the terms of the Board or court order and in accordance with any instructions of Holders of Trust Certificates not inconsistent with the requirement of the terms of any Board or court order. To the extent that registration is required under the Securities Act of 1933 or any other applicable securities laws in respect of any distribution of Trust Stock as contemplated herein, the Holder shall reimburse the Trustee for any expenses incurred by Trustee. The proceeds of the sale shall be distributed, on a pro rata basis, to or upon the order of the Holders hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require the

surrender to Trustee of the Trust Certificates hereunder before paying to the Holder such Holder's share of the proceeds.

(d) Unless sooner terminated pursuant to any other provision herein contained, this Voting Trust shall terminate one (1) year after the day and year first written above, so long as no violation of 49 U.S.C. § 11323 will result from such termination, and provided that this Voting Trust may be extended by the mutual agreement of the parties hereto pursuant to applicable state law, until such time as the ICC Termination Act of 1995 and the regulations promulgated thereunder by the Board, as presently in effect, shall no longer require that the Trust Stock be held in a voting trust. All Trust Stock and any other property held by the Trustee hereunder upon such termination shall be distributed to or upon the order of the Holders of Trust Certificates hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require surrender to the Trustee of the Trust Certificates hereunder before the release or transfer of the Trust Stock evidenced thereby. Upon termination of this Voting Trust, the Holders' respective rights, titles and interests in and to the Trust Stock then held by the Trustee shall be transferred to such Holders in accordance with the terms and conditions of this Voting Trust, and upon such transfer, this Voting Trust shall cease and come to an end.

(e) The Trustee shall promptly inform the Board of any transfer or disposition of Trust Stock pursuant to this Paragraph 12.

13. The Trustee shall not, by reason of this Voting Trust, or by the exercise of any powers or duties pursuant to this Voting Trust, incur any responsibility as shareholder, manager, trustee or otherwise by reason of any error of judgment, or mistake of law or fact, or of any omission of any agent or attorney, or of any misconstruction of this Voting Trust, or for any action of any sort taken or omitted or believed by the Trustee to be in accordance with the terms of this

Voting Trust or otherwise, except for the individual willful misconduct or gross negligence of the Trustee. The Trustee shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of the Trust Stock, or of any documents, or of any endorsement thereon, or for any lack of endorsement thereof, or for any description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or document or endorsement on the Trust Stock, except for the execution and delivery of this Voting Trust by the Trustee. Settlor agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, cost, or expense of any kind or character whatsoever in connection with this Voting Trust except those, if any, arising from or in connection with the gross negligence or willful misconduct of the Trustee, and will at all times undertake, assume full responsibility for, and pay all costs and expenses of any suit or litigation of any character, with respect to the Trust Stock or this Voting Trust, and if the Trustee shall be made a party thereto, Settlor will pay all costs and expenses, including reasonable attorneys' fees, to which the Trustee may be subject by reason thereof. The Trustee may consult with counsel, and the opinion of such counsel shall constitute full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion. Notwithstanding any provision herein to the contrary, and without limiting the foregoing, Settlor shall indemnify and save harmless Trustee from and against any and all liability, losses and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with claims asserted against SMRC or Settlor, or related to the ownership or operation of SMRC's properties, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5105 *et seq.*), the Resource

Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*) and analogous state or local laws (and regulations and orders issued thereunder); *provided*, that this indemnity shall not apply to the extent that such liability, losses or expenses arise out of or in connection with the gross negligence or willful misconduct of the Trustee.

14. The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee. The Trustee may at any time remove any agent so appointed by the Trustee and appoint a new agent to carry out the purposes herein.

15. The Trustee may at any time resign by delivering to Settlor and to the Holders, if different from the Settlor, Trustee's resignation in writing, such resignation to take effect the earlier of thirty (30) days after the date such notice is sent, or the date of the appointment of a successor trustee. Trustee shall cease to act as trustee hereunder effective upon the appointment of a successor trustee as hereinafter provided. Upon receiving notice of resignation, Settlor shall within fifteen (15) days appoint a successor trustee, who shall satisfy the requirements of Paragraph 7 hereof. If no successor trustee shall have been appointed and shall have accepted appointment within twenty (20) days after such notice of resignation, the resigning Trustee may petition any federal court for the appointment of a successor trustee consistent with the terms and conditions of this Agreement. In the event of death or inability to act on the part of the Trustee, the Settlor shall, within fifteen (15) days after such death or inability to act, appoint a successor trustee who shall satisfy the requirements of Paragraph 7 hereof. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, Settlor and all Holders shall be notified of such

assumption, whereupon the Trustee shall be discharged of his powers and duties hereunder and the successor trustee shall become vested therewith. In the event of any material violation of the terms and conditions of this Voting Trust, the Trustee shall become disqualified from acting as Trustee hereunder as soon as a successor trustee hereunder shall have been selected in the manner provided by this paragraph.

16. Except as provided hereunder, the Trustee herein appointed, or any successor trustee, shall not, in the Trustee's individual capacity or otherwise, buy, sell or deal in the stock, shares or membership interests of SMRC or of any company controlled by or affiliated with Settlor.

17. The Trustee accepts the powers and duties under this Voting Trust subject to all the terms, conditions and reservations contained herein and agrees to exercise the powers and perform the duties of Trustee as set forth herein.

18. All notices, demands, requests or other communications that may be or are required to be given, served or sent to the Trustee, Settlor, or Holders pursuant to this Voting Trust shall be in writing and shall be deemed to have been properly given or sent by mailing by registered or certified mail, return receipt requested, or by a national overnight delivery service, appropriately addressed to the Trustee, Settlor or Holders, as applicable, as follows:

If to the Trustee:

Byron B. Olsen  
1543 Grantham Street  
St. Paul, MN 55108-1449

If to Settlor:

Twin Cities & Western Railroad  
2925 - 12th Street East  
Glencoe, MN 55336

With copies to:

Rose-Michele Nardi  
Weiner Brodsky Sidman Kider PC  
1300 Nineteenth Street, NW  
Fifth Floor  
Washington, D.C. 20036-1609  
phone (for confirmation ) (202) 628-2000

Each notice, demand, request or communication which shall be mailed by registered or certified mail, or sent by national overnight delivery service, in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Upon Trustee's receipt of a notice to a Holder other than Settlor, or in the event Trustee is required to or sends notice to a Holder other than Settlor, Trustee shall forward or send such notice to the Holder of record at the last known address of such Holder listed on the books maintained by Trustee.

19. Copies of this Voting Trust shall be on file in the principal office of SMRC in the State of Tennessee, and shall be open to any officer of Settlor or Holder of any Trust Certificate daily during normal business hours.

20. In order to permit Trustee to perform the duties and obligations of this Voting Trust, Settlor shall provide Trustee with all corporate records and Board orders affecting the stock of SMRC, promptly upon Settlor's receipt or creation of such documents.

21. If, at any time, the Trustee is of the opinion that any tax or governmental charge is payable in respect of any Trust Stock held by the Trustee, or in respect of any distributions or other rights arising from or appurtenant to the subject matter of this Voting Trust, the Trustee may, but

shall not be required to, pay such tax or governmental charge. The Trustee shall have a first lien, in the sum of any amount so paid, along with interest at a rate of six percent (6%) per annum, against the Trust Stock held by the Trustee and/or against any dividends, distributions or other rights arising from or appurtenant to the subject matter of this Voting Trust, and may be satisfied therefrom.

22. If any term or provision of this Voting Trust is illegal, invalid or unenforceable under or inconsistent with present or future laws, including, but not limited to, the ICC Termination Act of 1995 and regulations promulgated thereunder by the Board, as may be then in effect, then in that event, it is the intention of the parties hereto that the remainder of this Voting Trust shall not be affected thereby and shall be valid and shall be enforced to the fullest extent permitted by law. In the event that the Board shall at any time hereafter by final order find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall, upon receipt of such final order, act in accordance with such final order instead of the provisions of this Voting Trust.

23. This Voting Trust may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

24. This Voting Trust shall be governed and construed in accordance with the laws of the State of Tennessee.

25. This Voting Trust may from time to time be modified or amended by agreement executed by the Trustee, Settlor and all Holders of Trust Certificates: (a) pursuant to an order of the Board; (b) with prior approval of the Board; (c) in order to comply with any order of the Board; or (d) upon receipt of an opinion of counsel satisfactory to Trustee and the Holders that an order of the Board approving such modification or amendment is not required, provided that a copy of such

modification or amendment shall have been provided to the Board, pursuant to 49 CFR Part 1013 or any successor provision.

26. This Voting Trust shall be binding upon the successors and assigns of the parties hereto.

27. Notwithstanding any provision to the contrary herein, this Voting Trust shall apply to the Estate, only to the extent that the Estate controls TCW, and shall apply to the Trust, only to the extent that the Trust controls TCW.

IN WITNESS WHEREOF, the parties hereto have executed this Voting Trust as of the date first written above.

TRUSTEE:

---

SETTLOR:

TWIN CITIES & WESTERN RAILROAD  
COMPANY

By:

Its:

EXHIBIT A

No. \_\_\_\_\_

\_\_\_\_\_ Shares

VOTING TRUST CERTIFICATE

FOR

OWNERSHIP INTEREST OF THE STOCK OF

SISSETON MILBANK RAILROAD COMPANY

THIS IS TO CERTIFY that \_\_\_\_\_ will be entitled, on the surrender of this Certificate, to receive on the termination of the Voting Trust Agreement by and between Twin Cities & Western Railroad Company ("Settlor") and Byron B. Olsen ("Trustee"), dated \_\_\_\_\_, 2012 ("Voting Trust"), or otherwise as provided in Paragraph 12 of that Voting Trust, all right, title and interest in a certificate or certificates for \_\_\_\_\_ Class \_\_\_\_\_ shares of Sisseton Milbank Railroad Company ("SMRC"). This Certificate is issued pursuant to said Voting Trust. A copy of the Voting Trust is on file in the registered office of SMRC, and open to inspection by the holder hereof. The Voting Trust, unless earlier terminated pursuant to the terms thereof, will terminate one year from the date on which it was made, as shown above, so long as no violation of 49 U.S.C. § 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of the Voting Trust, including the right to payments equal to the cash dividends, if any, paid by SMRC on a pro rata basis with respect to the shares represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Trustee or any successor, to be kept by such Trustee or successor, upon surrender hereof by the registered holder in person or by an attorney duly authorized in accordance with the provisions of the Voting Trust, and until so transferred, the Trustee may treat the registered holder as the owner of this Certificate for all purposes whatsoever, unaffected by any notice to the contrary.

By accepting this Certificate, the holder hereof assents to all provisions of, and becomes a party to, the Voting Trust.

IN WITNESS WHEREOF, the Trustee has signed this Certificate.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_

### VERIFICATION

I, Mark Wegner, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Petition for Exemption.

  
Mark Wegner, President  
Twin Cities & Western Railroad Company

Dated: June 14, 2012